

FINAL



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

Phone 252-261-2394 / Fax 252-255-0876

info@southernshores-nc.gov

www.southernshores-nc.gov

Planning Board Meeting

June 19, 2017

5:30 p.m., Pitts Center

MEETING MINUTES

I. CALL TO ORDER:

Chairperson Sam Williams called the meeting to order at 5:30 pm. Planning Board Members Elizabeth Morey, Sam Williams, Joe McGraw, David Neal, Board Attorney Jay Wheless, Town Attorney Ben Gallop, Town Planner Wes Haskett, and Town Clerk Sheila Kane were present.

II. PLEDGE OF ALLEGIANCE:

Chairperson Sam Williams led the Pledge of Allegiance.

III. APPROVAL OF AGENDA:

Chairperson Williams stated he would like to make a statement following the consideration of draft minutes. Elizabeth Morey motioned to approve the amended agenda. David Neal seconded the motion. The motion passed unanimously (4-0).

IV. APPROVAL OF MINUTES:

Joe McGraw motioned to approve the minutes of the June 5, 2017 Special Planning Board Meeting. Elizabeth Morey seconded the motion. The motion passed unanimously (4-0).

STATEMENT:

Chairperson Sam Williams stated there were only four board members present and that to receive a variance approval the applicant must receive an affirmative vote from all members present for all four standards.

Chairperson Williams gave the option of a continuance to both variance request applicants (VA-17-01 House Engineering & VA-17-02 Casey Varnell) until a future time when the Board of Adjustment would have five (5) board members present.

Chairperson Williams asked if either applicant had a decision at that time.

Rick House with House Engineering, Variance Application-17-01 choose to proceed.

Casey Varnell (Sharp, Graham, Baker & Varnell, LLP), Variance Application 17-02 choose to proceed.

V. PUBLIC COMMENT:

None

VI. OLD BUSINESS:
None

VII. NEW BUSINESS:

- A. ZTA-17-01: Zoning Text Amendment application submitted by the Town of Southern Shores to amend Section 36-132, (c) of the Southern Shores Town Code to establish residential accessory structures existing as of January 1, 2017 which were otherwise lawful and duly permitted at the time of their construction or modification and which are nonconforming due solely to the inclusion of living space within the accessory structure as legally nonconforming.

Chairperson Williams asked the Town Planner to present the Staff Report (attached).

Mr. Haskett reported Town Staff is proposing a Zoning Text Amendment (ZTA) to amend Section 36-132, (c) of the Town Zoning Ordinance to establish residential accessory structures existing as of January 1, 2017 which were otherwise lawful and duly permitted at the time of their construction or modification and which are nonconforming due solely to the inclusion of living space within the accessory structure as legally nonconforming. The request is a result of the fact that over the years, proposed accessory structures with living space have received permits and Certificates of Compliance/Occupancy while the Town Zoning Ordinance prohibited accessory structures from containing living space. By adopting the proposed language, all accessory structures containing living space which received permits will become legally nonconforming.

The Town's currently adopted Land Use Plan contains the following Policy that is applicable to the proposed ZTA:

•Policy 2: The community values and the Town will continue to comply with the founder's original vision for Southern Shores: a low density (1–3 units per acre) residential community comprised of single family dwellings on large lots (20,000 square feet or larger) served by a small commercial district (56 acres out of 2,175 acres) for convenience shopping and services located at the southern end of the Town. This blueprint for land use naturally protects environmental resources and fragile areas by limiting development and growth.

RECOMMENDATION

Town Staff has determined that the proposed amendment is consistent with the Town's currently adopted Land Use Plan and Town Staff recommends that the Board consider this when making its recommendation to the Town Council. Please note that prior to adopting or rejecting any zoning amendment, the Planning Board shall adopt a statement describing whether its action is consistent with the adopted Town Comprehensive Land Use Plan and explaining why the Planning Board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

Chairperson Williams called on questions from the Board.

Chairperson Williams confirmed with Town Planner Wes Haskett that the language is currently in the Town Code. Mr. Haskett confirmed that it was and stated that different administrators have had different interpretations. If strictly following the language, accessory structures that contain living space are not allowed. An amendment to the current Town Code would be needed to allow accessory structures with living space.

Following a brief discussion, Chairperson Williams made the following motions:

MOTION: The proposed text amendment is consistent with the Town's Land Use Plan. The motion was seconded by Joe McGraw. The motion passed unanimously (4-0).

MOTION: The proposed action is reasonable and in the public's interest because it is consistent with the Land Use Plan and all accessory structures containing living space which received permits will become legally non-conforming. The motion was seconded by Elizabeth Morey. The motion passed unanimously (4-0).

MOTION: Recommend approval to the Town Council of ZTA-17-01 to establish residential accessory structures existing as of January 1, 2017, which were otherwise lawful and duly permitted at the time of their construction or modification and which are nonconforming due solely to the inclusion of living space within the accessory structure as legally nonconforming as described in Section 36-132, (c) of the Town Zoning Ordinance. The motion was seconded by Joe McGraw. The motion passed unanimously (4-0).

Chairperson Williams stated that ZTA-17-01 passes with a recommendation of approval to the Town Council.

Next Agenda Item:

B. Variance 17-01

Chairperson Williams stated that this is a variance request to reduce the side yard setback requirement on a 50 foot wide lot located at 103 Ocean Blvd submitted by House Engineering.

Chairperson Williams stated that the Board of Adjustment hearing is a quasi-judicial hearing and he explained the quasi-judicial public hearing procedure and rules. He stated that all witnesses wishing to give testimony needed to be sworn in by the Clerk. He then reviewed several areas of possible conflicts of interest and asked the Planning Board members if they had any conflicts of interest; hearing none Chairperson Williams moved on.

SWEARING IN OF ALL PEOPLE GIVING TESTIMONY

All parties wishing to give testimony during the public hearing were sworn in by the Clerk.

OPEN HEARING & EVIDENTIARY PORTION OF HEARING

Chairperson Williams opened the public hearing and called on Wes Haskett to present the Staff Report (attached).

Mr. Haskett stated the applicant is requesting a variance of three feet on both (north and south) side yard setback requirements. The applicable side yard setback requirements in the RS-1 Single-Family Residential District is 15 feet. The width of the subject property is 50 feet. which would result in a single family dwelling that could not exceed 20 feet in width if the applicable side yard setback requirements are met.

Section 36-367 of the Town Zoning Ordinance establishes that the Planning Board, when performing the duties of the Town Board of Adjustment, shall vary any of the provisions of the Zoning Ordinance upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - The subject property is 50 foot wide with 15 foot side yard setback requirements which leaves a width of 20 foot for development. To the best of Town Staff's knowledge, there are no existing 20 foot wide single-family dwellings in the Town.
 - A Demolition Permit was issued on December 14, 2016 which was formerly located on the subject property and the adjacent property (Lot 5).
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 - There are several other 50 foot wide vacant lots of record that are oceanfront and non-oceanfront. There are also existing single-family dwellings that are built on multiple 50 foot wide lots that encroach on the currently applicable 15 foot side yard setback requirement.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 - The subject property is a lot of record that was originally established around 1948 with a width of 50 feet and subsequently purchased by the current owner.
 - Demolition of the duplex and transferring ownership were acts taken by the applicant that may have resulted in the hardship in the applicant's complaint.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
 - The Town's Zoning Ordinance allows for development on nonconforming lots of record. Section 36-132, (a), (1) states that in any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record on the effective date of adoption of the ordinance from which the chapter is derived, notwithstanding limitations imposed by other provisions of the chapter. These provisions shall apply even though such lot fails to meet the requirements for area or width, that are generally applicable in the district provided that yard dimensions and requirements other than these applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment as established in Article XII of the chapter.

Chairperson Williams called on the Board for questions. Hearing none he asked for the staff report and attachments to be entered into the evidentiary part of the record.

The applicant, Rick House with House Engineering, stated that he represented the owners Gretchen Owens and Edwin Goldman of 103B Ocean Blvd. He stated that this is very similar to the other variance requested and approved at 103A Ocean Blvd. He stated that they were asking for a 12-foot side setback on both sides of the lot. This would allow for a 26 foot wide house to be built.

Chairperson Williams called on the Board and public for comment or questions.

Hearing no comments, Board Attorney Wheless stated that the application asked if granting the variance will provide safer egress from the dwelling. Rick House replied that

a narrow house without the reduced side yard setback would limit egress from the house in case of an emergency.

Board Attorney Wheless asked if plans have been designed for the property. Mr. House replied that he was hired to apply for the variance and he has not seen the plans yet. Chairperson Williams stated that the application asks to describe conditions that are peculiar to the property, such as location, size or topography. As noted by staff there are fewer than ten 50 foot wide lots, there are no 20 foot wide homes within the town and these lots are unimproved. Mr. Williams asked Mr. House to expand on that to focus on conditions peculiar to the property. Mr. House stated that the Town has a 15 foot setback associated with all size properties in Southern Shores. The setback requirement was once 10 feet when this lot was developed which created a scenario where only a 20 foot wide house could be built which does not exist in southern Shores. This penalizes the current or future owners of this lot.

Chairperson Williams requested the application and associated materials to be entered into the evidentiary record.

Chairperson Williams closed the evidentiary portion of the hearing.

Chairperson Williams stated that the four (4) standards previously presented must be met and voted on separately.

Chairperson Williams opened the floor for deliberation and a decision.

The board held a brief discussion on finding #1.

(1) Does strict application of the ordinance result in an unnecessary hardship to the applicant. **Vote of Yes needed to pass (4 Yes-0 No). Passed unanimously.**

The board held a brief discussion on finding #2.

(2) Does the hardship result from conditions that are peculiar to the property, such as location, size, or topography. **Vote of Yes needed to pass (4 Yes-0 No). Passed unanimously.**

The board held a brief discussion on finding #3.

(3) The hardship results from actions taken by the applicant (or the property owner). Voting no is for approval of the variance. **Vote of No needed to pass (0 Yes-4 No). Passed unanimously.**

The board held a brief discussion on finding #4.

(4) Is the requested variance consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and is substantial justice is achieved. **Vote of Yes needed to pass (4 Yes-0 No). Passed unanimously.**

MOTION: Chairperson Sam Williams moved to approve the variance as requested. The motion was seconded by Elizabeth Morey. The motion passed unanimously (4-0).

NEXT AGENDA ITEM:

- C. **VA-17-02:** Variance application submitted by Casey Varnell (Sharp, Graham, Baker & Varnell, LLP) for a variance from Section 36-202, (7), (a) and Section 36-202, (7), (b) of the Southern Shores Town Code for the property located at 132 Bent Oak Ct.

Chairperson Williams stated that the Board of Adjustment hearing is a quasi-judicial hearing and explained the quasi-judicial public hearing procedure and rules. He stated that all witnesses wishing to give testimony needed to be sworn in by the Clerk. He then reviewed several areas of possible conflicts of interest and asked the Planning Board members if they had any conflicts of interest or undisclosed ex parte communications by members of the board, hearing none Chairperson Williams moved on.

David Neil stated he communicated with the Town Planner and Board Attorney on whether he could visit the property being considered. Attorney Wheless stated that communication was done largely by email and asked Mr. Neil if he went out on a fact-finding mission. Mr. Neil stated he visited the site and communicated with no one.

Elizabeth Morey Stated she knows the applicant's contractor but has no business relationship.

Hearing no conflicts, Chairperson Williams continued by opening the hearing.

SWEARING IN OF ALL PEOPLE GIVING TESTIMONY

All parties wishing to give testimony during the public hearing were sworn in by the Clerk.

OPEN HEARING & EVIDENTIARY PORTION OF HEARING

Chairperson Williams opened the public hearing and called on Wes Haskett to present the Staff Report (attached).

Mr Haskett stated the applicant is Casey Varnell, and the requested action is a Variance from Section 36-202, (7), (a), top plate height requirements and Section 36-202, (7), (b), maximum height requirements for the RS-1, Single-family Residential District. The property is located at 132 Bent Oak Ct. and the applicable zoning district is RS-1, Single-Family Residential District. All surrounding land uses and zoning to the North, South, East and West are all RS-1. The physical characteristics are that it is a single-family dwelling currently under construction. Applicable regulations from Chapter 36, Zoning Ordinance: Article III, Interpretation and Definition of Terms; Article IV, Application of Regulations; Article VII, Schedule of District Regulations, Article X, Administration and Enforcement; Article XI, Penalty; and Article XII, Board of Adjustment.

Mr. Haskett stated staff's analysis is that the single-family dwelling currently under construction located at 132 bent Oak Ct. has been determined to be in violation of Chapter 36, Section 36-202, (d), (7), (a) and (b) of the Town Zoning Ordinance. Section 36-202, (d), (7), (b) establishes a maximum building height of 35 feet which is measured from the lowest elevation of the finished grade or the original grade, whichever is lower, at the corners of the structure. Section 36-202, (d), (7), (a) establishes a maximum top plate height of 26 feet which is measured from the average ground elevation to the top of the highest top plate. The approved site plan for the Zoning Permit issued on November 16, 2016 establishes the lowest elevation at the corners of the structure at 7.4 feet above mean sea level (msl) using the NAVD88 vertical datum and a maximum building height of 42.4 feet NAVD88. The approved site plan also establishes the average ground elevation at 11.2 feet NAVD88 and a maximum top plate height of 37.2 feet NAVD88.

The first required height certification submitted by Doug Styons, P.L.S. indicates that the highest roof line is currently at 47.25 feet NAVD88 which exceeds the maximum building height for the single-family dwelling by 4.85 feet. An additional height certification issued by Mr. Styons indicates that the highest top plate is currently at 38.75 feet NAVD88 which exceeds the maximum top plate height for the single-family dwelling by 1.55 feet. The contractor for the project, Jeffrey H. Haskett Homes, Inc., submitted a Building/Floodplain Development Permit application on October 31, 2016 which indicates that the maximum building height would be 34 feet nine inches and the top plate height would be 26 feet. The not to scale building plans submitted with the application indicate that the maximum building height would be 34 feet nine inches and the top plate height would be 26 feet 4 and one-half inches.

The applicant is requesting a variance to allow a different point of measurement for determining the building height and top plate height for the single-family dwelling. No information has been provided that establishes a proposed point of measurement or the impact it would have on the building height and top plate height of the single-family dwelling.

Section 36-367 of the Town Zoning Ordinance establishes that the Planning Board, when performing the duties of the Town Board of Adjustment, shall vary any of the provisions of the Zoning Ordinance upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - The alleged hardship neither results from the application of the ordinance nor is it unnecessary. The hardship results from the owners' agent, the general contractor, not being familiar with the top plate height requirements and the maximum building height requirements established in the Town's Zoning Ordinance. For many years, the height limitations on homes in Southern Shores have been calculated the same way and the ordinance has been carefully considered without amendments.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 - The current top plate height and maximum height requirements have been in effect since at least 2001 which apply to all of the RS-1, Single-Family Residential zoning district.
 - The elevations and variations in elevation on the property are not materially dissimilar from numerous other properties throughout the Town. The elevations of the original grade at the corners of the structure were 14.7 feet and 13.2 feet on the front and 7.4 feet and 9.3 feet on the rear.
 - The unfortunate circumstance is a personal one in that it was due to the owners' agent, the general contractor, not being familiar with the Town's Zoning Ordinance.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 - The alleged hardship results solely from the owners' agent, the general contractor, not being familiar with the Town's Zoning Ordinance and incorrectly calculating the measurements of the structure for determining top plate height and maximum building height.

- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
- The Town has often debated the current height requirements established in the Town's Zoning Ordinance. Despite vigorous debate, the methods of calculation have remained in place for many years. In so doing, they have applied to a vast majority of homes within the Town despite having many owners desiring higher building heights and top plates. While there is little public safety issue, the requested variance is inconsistent with the spirit, purpose and intent of the Zoning Ordinance and substantial justice would not be achieved.

Chairperson Williams called on the Board for questions for staff.

Attorney Varnell asked if reference to the lowest level of original grade being where the structure should have been measured from, would that in this particular case been below street level. Mr. Haskett replied that he did not know what the actual height of street level and could not answer that with 100% certainty.

Attorney Varnell asked if we took the height from the finished grade as it stands today, would it be compliant? Mr. Haskett stated the height limit of 35 feet would have to be measured by a surveyor as staff does not do measurements. Mr. Varnell replied he thought that to be the case.

Mr. Haskett explained the way the building height is calculated to a member of the public. He stated the maximum building height of 35 feet is taken from the lowest corner of the structure using the original grade or finished grade, which ever one is lower. He further stated this rule has been in place at least since 2001 but most likely well before.

Mr. Haskett answered Mr. Neil's questions on original grade by stating original grade is the pre-disturbed grade.

A member of the public asked why was it not discovered when the pilings went into the ground, from that point to the pitch of the roof. Mr. Haskett stated the Town requires height certificates prior to the sheathing inspection. Staff does not monitor what is going on at every job site but it is policy that a height survey be submitted before a sheathing inspection. That signed and sealed height certificate gives the true elevations.

Mr. Neil asked if that certificate was received. Mr. Haskett stated it was and that is when a determination was made that it was too high and they were encouraged to stop work.

Mr. Haskett stated that a zoning permit is issued at the same time a building permit is issued. A zoning permit for a new single family dwelling always establishes the lowest corner height and it gives exactly the maximum height that can be constructed. He stated that this zoning permit stated the lowest corner was 7.4 feet which allows a maximum height of 42.4 feet.

Town Attorney Gallop asked Mr. Haskett to specifically state that he was not giving the height of the house but that he gave the maximum height that the house could be built to. Mr. Haskett stated that was correct. That height information is on the permit and signed by the contractor.

Town Attorney Gallop asked Mr. Haskett if there is any rule stating the contractor cannot obtain a height survey earlier in the process and that the height information is received at different times. Mr. Haskett stated there is no rule stating a height certificate cannot be received earlier and the maximum height is established at the time the zoning permit is

issued. The actual height certificate from the surveyor is received after construction has begun.

A member of the public asked if this information is given to the builder prior to the permit. Mr. Haskett stated all the information is clearly shown on the application and then restated on the zoning permit. He stated prior to construction, a survey establishing the four corners, a maximum height is established, and then a permit is issued with those maximums.

Chairperson Williams called on the Board for questions.

David Neil asked Mr. Haskett what he did when he received the height certificate and realized it was too high. Mr. Haskett stated he notified the contractor.

Elizabeth Morey stated that in the packet materials it states that Not to Scale (NTS) building plans were submitted. She questioned if that was typical to receive NTS plans to which Mr. Haskett stated no.

David Neil asked Mr. Haskett if he could elaborate on the NTS. Mr. Haskett stated on the plans it will say one inch equals x feet and will state to scale. In this case, someone actually hand wrote "not to scale" on the plans.

Elizabeth Morey asked if you can approve a not to scale building? Mr. Haskett stated this was approved. Elizabeth Morey asked how often you approve not to scale. Mr. Haskett stated typically they are to scale.

Elizabeth Morey asked if any other documentation such as an as built survey had been received. Mr. Haskett stated that prior to the sheathing and rough in inspection, a height certificate was received and this is the only height documentation.

David Neil asked if there was any discussion with the owner or builder pertaining to height given prior to the permit being issued. Mr. Haskett stated other than what is on the application and permit, no specific direction was given.

David Neil asked where the information about the height is on the permit? Mr. Haskett produced a copy of a blank permit application on the overhead screen.

Town Attorney Gallop asked if a copy of the zoning permit application minus the recently added elevation drawing was given to the applicant's contractor. Mr. Haskett replied yes.

Chairperson Williams stated it was his understanding that the lowest measurement of the corners is a starting point and if you go up 35 feet from that it is the maximum height of the house. He asked Mr. Haskett about his statement that the maximum height could be 42.4 feet and could he explain the difference from the 35 feet to the 42.4 feet heights. Mr. Haskett stated that you take the original survey grade of 7.4 feet and add the 35 feet maximum building height allowed to reach a total maximum height of 42.4 feet.

Chairperson Williams asked if the contractor has built a home in Southern Shores before. Mr. Haskett replied the contractor may have prior to his start of employment in November, 2009 but he has done some other projects. He clarified projects as other permits but cannot recall if he has built a single-family dwelling during his time of employment.

Chairperson Williams asked who is ultimately responsible? Mr. Haskett stated it is his job to establish and enforce the ordinance. When a permit is issued and the maximum is established, then, in his opinion, it is up to the contractor to abide by those requirements.

Chairperson Williams further questioned if the homeowner had responsibility. Town Attorney Gallop stated that the homeowner ultimately has responsibility even if they have someone that acts on their behalf as their agent and they have a contractual relationship with. The homeowner is responsible for any zoning violations on their property.

Hearing no other questions of staff, Chairperson Williams requested the staff report, zoning permit 2016-108 dated November 16, 2016 and a copy of the blank application packet minus the structure drawing to be entered into the evidentiary record.

Chairperson Williams called for the applicant's presentation.

Casey Varnell of Sharp, Graham, Baker & Varnell introduced himself and called on the homeowner of the property, Mrs. Fiedler. He asked that she give her story and what are her interests in this property.

Mrs. Fiedler stated that her husband surprised her at her birthday with the lot and that they were going to build a home. Her family moved here and has been living here since last June with other family members. The home they are building includes living space for her elderly mother. The homeowner stated she did not know that the maximum height had been exceeded.

Applicant's Attorney Casey Varnell stated that his client's home exterior is done and the interior needs to be completed. If you go by the strict ordinance, then the roof height is in violation of 4.85 ft. and the top plate is being exceeded by 1.55 ft.

Attorney Varnell called on the contractor, Jeff Haskett, to answer questions the Board may have.

Attorney Varnell asked Jeff Haskett if the building plans, although not to scale, contained the height of the house. Jeff Haskett replied that it did and the height was 34.9 feet tall.

Attorney Varnell asked if that original grade measurement where it was supposed to be taken was below street level. Jeff Haskett stated it is about 5 ft. below street level.

Attorney Varnell asked Jeff Haskett if it was measured from what we proposed was the original grade and put fill in, would the house be in compliance. Jeff Haskett answered yes except for the plate pipe which was already on the plan 26 feet 4.5 inches.

Attorney Varnell asked what would have had to occur to the plans if measuring from the lowest point beneath street level. Jeff Haskett stated they had to cut the hill down but they would have had to cut it down 5 more feet. Attorney Varnell stated then you would be building in a hole to which Jeff Haskett stated pretty much.

Attorney Varnell asked what options do they have today if the variance isn't approved to bring the violation into compliance and what are they if any. Jeff Haskett replied he doesn't know of any. Attorney Varnell asked can you lower the roof to which Jeff Haskett replied no. Attorney Varnell stated they would have to cut the lower level out and lower the house.

Attorney Varnell began going through elements of granting a variance. He stated as far as hardship is concerned, eliminating the lower level would eliminate the living space that was created for Mrs. Fiedler's elderly mother who cannot climb steps. You can dig it out but that would place the home in a big bowl leading to flooding issues. If the house was built as height requirements stated it should have been it would have been susceptible to all types of storm water issues. Even if the solution is feasible the cost would be astronomical.

Attorney Varnell stated as far as topography, all of the surrounding properties are as tall if not taller. This can be seen just by driving by the property. Having a dip in the property would be peculiar to this piece of property.

Attorney Varnell stated that he realizes that the homeowner is ultimately responsible but she did not put a nail in that property or hire any subcontractors. She had no idea and it was an honest mistake. Her builder has done everything he can do to rectify this situation as far as an analytical standpoint. Tonight, we have learned that there is not a whole lot that can be done except for approval of the variance. Is it necessary to penalize the homeowner who had no hand in this?

Attorney Varnell stated the last element requires consistency with the spirit, purpose, and intent of the ordinance. What was the intent of the ordinance? He said the first thing that comes to mind is someone building on a dune or a ridge and destroying someone's view. I do not think the purpose is for someone who is building a house in a dip and not blocking views.

Town Attorney Gallop stated that the ultimate zoning responsibility falls on the homeowner and that the homeowner has a contract with the builder and that builder under contract is typically not supposed to make mistakes. The builder, in this case, everyone agrees despite good faith, is a good person, a good builder, and there are no issues with the builder other than a mistake. Attorney Varnell stated we are establishing there that she is going to have to chase her builder down, causing her to spend more money. She relied on the contractor's professional opinion and yes, his professional opinion we are penalizing on this particular job because it did not suit the ordinance. Again, we are penalizing her for something that was not her fault.

Town Attorney Gallop stated if the homeowner prevails, ultimately the penalty is not on the homeowner and it may or may not be on the contractor. He may have insurance that covers things.

Attorney Varnell stated we are creating extra steps for something the homeowner did not create.

A member of the public asked if there was an ordinance against building below street level. Town Attorney Gallop stated that there is not. He stated more favorable higher lots were purchased years ago, leaving the lower level lots.

Chairperson Williams moved onto Board questions.

David Neil asked Attorney Varnell what he thought is the intent of the ordinance. Attorney Varnell answered it was his opinion that it was to protect views.

Elizabeth Morey stated in the staff report, it is mentioned more than once that the general contractor was not familiar with the Southern Shores zoning ordinance. She asked Attorney Varnell if he would agree with that statement in the staff report. Mr.

Varnell stated there is no denying that the Town code is available for the public. Disclaiming efforts can be taken by the Town to make it a bit easier to understand the ordinance, especially something with this gravity that this particular ordinance carries and with it being unique from most of the other Towns.

Elizabeth Morey asked Jeff Haskett the same question. He stated did he know what it was, yes. Was he familiar with it, he supposes so? He further stated it has been awhile since he built in Southern Shores and has built in every other place where they are all different and not quite like this so he would say not familiar.

Chairperson Williams asked Jeff Haskett if he recognizes that Southern Shores means of measuring is different than other Towns. Mr. Haskett replied he recognizes that.

Chairperson Williams asked Jeff Haskett when he last built a house in Southern Shores. Mr. Haskett replied that it has been awhile, probably seven (7) years.

Chairperson Williams asked Jeff Haskett if all the other Towns are the same and only Southern Shores different. Mr. Haskett replied they are all different. Chairperson Williams then asked if he checked what Southern Shores required specifically. Mr. Haskett stated he did check but when standing at the lot with the four survey stakes we cut the hill down and should have measured at that point but when we got to street level he thought they were ok. He further stated that it was honest mistake, my mistake.

Chairperson Williams asked Jeff Haskett why he assumed that the house had to be higher than the street. Mr. Haskett stated in the past there has been water run off issues with houses below the street level. In his opinion, he usually tries to keep the houses at least street level to keep that from happening.

Board Attorney Wheless asked Jeff Haskett how many square feet is the lowest level to which Mr. Haskett replied maybe 500. Mr. Wheless asked what type of roof shape and Mr. Haskett replied A shape. Mr. Wheless asked how many feet from the floor of the top level to the pitch of the roof. Mr. Haskett replied approximately 13 feet. Attorney Wheless stated that Mr. Varnell said the roof could not be cut down. Jeff Haskett replied if you cut the roof down 5 feet then you would have basically a flat roof.

Board Attorney Wheless asked if a cost analysis had been done to determine that cost of bringing the structure into compliance. He stated essentially by cutting the lower level or roof. Jeff Haskett stated he had not done a cost analysis but it would not be cheap.

Chairperson Williams called for Public Comment and the following citizens spoke in opposition to the variance:

Margaret Raffa 134 Bent Oak Ct.

Ross Botson, 130 Bent oak Ct

Property Owner Mrs. Fiedler stated she did not realize this would be so objective and had plans of landscaping to make the property visually appealing to the neighborhood and not to have storm water runoff onto other properties. She stated if they do not get the variance they will default on the property because they cannot afford expensive changes.

Town Attorney Gallop sympathized with the property owner stating it was a horrible position to be in but from a pure legal perspective the variance should not be granted.

Town Attorney Varnell stated that the Board is allowed to look at items and make decisions. He asked that the Board deeply consider granting the variance and look at the intent of the ordinance.

DELIBERATION AND DECISION

Chairperson Williams stated that the staff report, application, and all information in the packet received by the Board, along with the issued building permit, zoning permit, and blank permit application minus the structure drawing was to be entered into the record.

Chairperson Williams stated that the four (4) standards previously presented must be met and voted on separately.

Chairperson Williams opened the floor for deliberation and a decision.

Following discussion, the board made the following findings:

The board held a brief discussion on finding #1.

(1) Does a strict application of the ordinance result in an unnecessary hardship to the applicant. **Vote of Yes needed to pass (2 Yes-2 No). Tied vote.** Elizabeth Morey and Joe McGraw casting the NO vote.

The board held a brief discussion on finding #2.

(2) Does the hardship result from conditions that are peculiar to the property, such as location, size, or topography. **Vote of Yes needed to pass (1 Yes-3 No). Vote to pass failed.** David Neal cast the sole yes vote.

The board held a brief discussion on finding #3.

(3) The hardship results from actions taken by the applicant (or the property owner). **Vote of No needed to pass (0 Yes-4 No). Vote to approve passed.**

The board held a brief discussion on finding #4.

(4) Is the requested variance consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and is substantial justice is achieved. **Vote of Yes required to pass. Vote (1 Yes -3 No). Vote to pass failed.** David Neil cast the sole yes vote.

MOTION: Chairperson Sam Williams moved to deny variance 17-02 (132 Bent Oak Ct.) based on the above votes. The motion was seconded by Joe McGraw. The motion passed unanimously (3-1). David Neil cast the sole No vote.

Chairperson Williams closed the Board of Adjustment hearing.

VIII. PUBLIC COMMENT: None

IX. PLANNING BOARD MEMBER COMMENTS: Chairperson Williams stated a good deal of discussion was made about changing how height is measured. Recommendations were made but a Council Member stated if he

had to follow it then everyone has to follow it and that is what wanting to change the height ordinance is up against.

Chairperson Williams also stated that the Planning Board is in the middle of reviewing Module 1 of the Town Code Update and there is nothing that says that the Planning Board cannot make recommendations to Council on how height is measured or anything else.

X. ANNOUNCEMENTS:

Chairperson Williams announced that the next planning board meeting is July 17th.

XI. ADJOURNMENT:

Hearing no other business Chairperson Williams called for a motion to adjourn. David Neal moved to adjourn. The motion was seconded by Elizabeth Morey. The motion to adjourn was carried at 8:32 pm.

ATTEST:



Sam Williams, Chairperson

RESPECTFULLY SUBMITTED:



Sheila Kane, Town Clerk

STAFF REPORT

To: Southern Shores Planning Board
Date: June 14, 2017
Case: ZTA-17-01
Prepared By: Wes Haskett, Town Planner/Code Enforcement Officer

GENERAL INFORMATION

Applicant: Town Staff
Requested Action: Amendment of the Town Zoning Ordinance by amending Section 36-132, (c) of the Southern Shores Town Code to establish residential accessory structures existing as of January 1, 2017 which were otherwise lawful and duly permitted at the time of their construction or modification and which are nonconforming due solely to the inclusion of living space within the accessory structure as legally nonconforming.

ANALYSIS

Town Staff is proposing a Zoning Text Amendment (ZTA) to amend Section 36-132, (c) of the Town Zoning Ordinance to establish residential accessory structures existing as of January 1, 2017 which were otherwise lawful and duly permitted at the time of their construction or modification and which are nonconforming due solely to the inclusion of living space within the accessory structure as legally nonconforming. The request is a result of the fact that over the years, proposed accessory structures with living space have received permits and Certificates of Compliance/Occupancy while the Town Zoning Ordinance prohibited accessory structures from containing living space. By adopting the proposed language, all accessory structures containing living space which received permits will become legally nonconforming.

The Town's currently adopted Land Use Plan contains the following Goal and Policy that are applicable to the proposed ZTA:

- **Policy 2:** The community values and the Town will continue to comply with the founder's original vision for Southern Shores: a low density (1–3 units per acre) residential community comprised of single family dwellings on large lots (20,000 square feet or larger) served by a small commercial district (56 acres out of 2,175 acres) for convenience shopping and services located at the southern end of the Town. This blueprint for land use naturally protects environmental resources and fragile areas by limiting development and growth.

RECOMMENDATION

Town Staff has determined that the proposed amendment is consistent with the Town's currently adopted Land Use Plan and Town Staff recommends that the Board consider this when making its recommendation to the Town Council. Please note that prior to adopting or rejecting any zoning amendment, the Planning Board shall adopt a statement describing whether its action is

consistent with the adopted Town Comprehensive Land Use Plan and explaining why the Planning Board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

STAFF REPORT

To: Southern Shores Planning Board
Date: June 14, 2017
Case: VA-17-01
Prepared By: Wes Haskett, Town Planner/Code Enforcement Officer

GENERAL INFORMATION

Applicant: House Engineering, P.C.
P.O. Box 466
Kitty Hawk, NC 27949

Requested Action: Variance from Section 36-202, (d), Dimensional Requirements for the RS-1 Single-family Residential District

PIN #: 986712863861
Location: 103 Ocean Blvd.
Zoning: RS-1, Single-Family Residential District

Existing Land Use: "Residential"

Surrounding Land Use & Zoning:

North- Residential; RS-1, Single-Family Residential District
South- Residential; RS-1, Single-Family Residential District
East- Residential; RS-1, Single-Family Residential District
West- Conservation; RS-1, Single-Family Residential District

Physical Characteristics: Vacant

Applicable Regulations: Chapter 36, Zoning Ordinance: Article III, Interpretation and Definition of Terms; Article V, Nonconformities; Article VII, Schedule of District Regulations, Article XII, Board of Adjustment.

ANALYSIS

The applicant is requesting a variance of three feet on both (north and south) side yard setback requirements. The applicable side yard setback requirements in the RS-1 Single-Family Residential District is 15 ft. The width of the subject property is 50 ft. which would result in a single family dwelling that could not exceed 20 ft. in width if the applicable side yard setback requirements are met.

Section 36-367 of the Town Zoning Ordinance establishes that the Planning Board, when performing the duties of the Town Board of Adjustment, shall vary any of the provisions of the Zoning Ordinance upon a showing of all of the following:

- (5) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- The subject property is 50 ft. wide with 15 ft. side yard setback requirements which leaves a width of 20 ft. for development. To the best of Town Staff's knowledge, there are no existing 20 ft. wide single-family dwellings in the Town.
 - A Demolition Permit was issued on December 14, 2016 which was formerly located on the subject property and the adjacent property (Lot 5).
- (6) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- There are several other 50 ft. wide vacant lots of record that are oceanfront and non-oceanfront. There are also existing single-family dwellings that are built on multiple 50 ft. lots that encroach the currently applicable 15 ft. side yard setback requirement.
- (7) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- The subject property is a lot of record that was originally established around 1948 with a width of 50 ft. and subsequently purchased by the current owner.
 - Demolition of the duplex and transferring ownership were acts taken by the applicant that may have resulted in the hardship in the applicant's complaint.
- (8) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
- The Town's Zoning Ordinance allows for development on nonconforming lots of record. Section 36-132, (a), (1) states that in any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record on the effective date of adoption of the ordinance from which the chapter is derived, notwithstanding limitations imposed by other provisions of the chapter. These provisions shall apply even though such lot fails to meet the requirements for area or width, that are generally applicable in the district provided that yard dimensions and requirements other than these applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment as established in article XII of the chapter.

STAFF REPORT

To: Southern Shores Planning Board
Date: June 14, 2017
Case: VA-17-02
Prepared By: Wes Haskett, Town Planner/Code Enforcement Officer

GENERAL INFORMATION

Applicant: Casey Varnell, Attorney at Law
P.O. Drawer 1027
Kitty Hawk, NC 27949

Requested Action: Variance from Section 36-202, (7), (a), top plate height requirements and Section 36-202, (7), (b), maximum height requirements for the RS-1 Single-family Residential District.

PIN #: 986707571722
Location: 132 Bent Oak Ct.
Zoning: RS-1, Single-Family Residential District

Existing Land Use: "Residential"

Surrounding Land Use & Zoning:

North- Residential; RS-1, Single-Family Residential District
South- Residential; RS-1, Single-Family Residential District
East- Residential; RS-1, Single-Family Residential District
West- Residential; RS-1, Single-Family Residential District

Physical Characteristics: Single-family dwelling currently under construction.

Applicable Regulations: Chapter 36, Zoning Ordinance: Article III, Interpretation and Definition of Terms; Article IV, Application of Regulations; Article VII, Schedule of District Regulations, Article X, Administration and Enforcement; Article XI, Penalty; and Article XII, Board of Adjustment.

ANALYSIS

The single-family dwelling currently under construction located at 132 bent Oak Ct. has been determined to be in violation of Chapter 36, Section 36-202, (d), (7), (a) and (b) of the Town Zoning Ordinance. Section 36-202, (d), (7), (b) establishes a maximum building height of 35 feet which is measured from the lowest elevation of the finished grade or the original grade, whichever is lower, at the corners of the structure. Section 36-202, (d), (7), (a) establishes a maximum top plate height of 26 feet which is measured from the average ground elevation to the top of the highest top plate. The approved site plan for the Zoning Permit issued on November 16, 2016 establishes the lowest elevation at the corners of the structure at 7.4 feet above mean sea level (msl) using the NAVD88 vertical datum and a maximum building height of 42.4 feet NAVD88. The approved site plan also establishes the average ground elevation at 11.2 feet NAVD88 and a maximum top plate height of 37.2 feet NAVD88.

The first required height certification submitted by Doug Styons, P.L.S. indicates that the highest

roof line is currently at 47.25 feet NAVD88 which exceeds the maximum building height for the single-family dwelling by 4.85 feet. An additional height certification issued by Mr. Styons indicates that the highest top plate is currently at 38.75 feet NAVD88 which exceeds the maximum top plate height for the single-family dwelling by 1.55 feet. The contractor for the project, Jeffrey H. Haskett Homes, Inc., submitted a Building/Floodplain Development Permit application on October 31, 2016 which indicates that the maximum building height would be 34 feet, nine inches and the top plate height would be 26 feet. The not to scale building plans submitted with the application indicate that the maximum building height would be 34 feet, nine inches and the top plate height would be 26 feet, 4 and one-half inches.

The applicant is requesting a variance to allow a different point of measurement for determining the building height and top plate height for the single-family dwelling. No information has been provided that establishes a proposed point of measurement or the impact it would have on the building height and top plate height of the single-family dwelling.

Section 36-367 of the Town Zoning Ordinance establishes that the Planning Board, when performing the duties of the Town Board of Adjustment, shall vary any of the provisions of the Zoning Ordinance upon a showing of all of the following:

- (9) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - The alleged hardship neither results from the application of the ordinance nor is it unnecessary. The hardship results from the owners' agent, the general contractor, not being familiar with the top plate height requirements and the maximum building height requirements established in the Town's Zoning Ordinance. For many years, the height limitations on homes in Southern Shores have been calculated the same way and the ordinance has been carefully considered without amendments.
- (10) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 - The current top plate height and maximum height requirements have been effect since at least 2001 which apply to all of the RS-1, Single-Family Residential zoning district.
 - The elevations and variations in elevation on the property are not materially dissimilar from numerous other properties throughout the Town. The elevations of the original grade at the corners of the structure were 14.7 feet and 13.2 feet on the front and 7.4 feet and 9.3 feet. on the rear.
 - The unfortunate circumstance is a personal one in that it was due to the owners' agent, the general contractor, not being familiar with the Town's Zoning Ordinance.
- (11) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

- The alleged hardship results solely from the owners' agent, the general contractor, not being familiar with the Town's Zoning Ordinance and incorrectly calculating the measurements of the structure for determining top plate height and maximum building height.

(12) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

- The Town has often debated the current height requirements established in the Town's Zoning Ordinance. Despite vigorous debate, the methods of calculation have remained in place for many years. In so doing, they have applied to a vast majority of homes within the Town despite having many owners desire higher building heights and top plates. While there is little public safety issue, the requested variance is inconsistent with the spirit, purpose and intent of the Zoning Ordinance and substantial justice would not be achieved.